

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

KEITH COOPER,)	
)	
Plaintiff,)	
)	Case No. 3:17-CV-00834-PPS-MGG
v.)	
)	
CITY OF ELKHART, STEVE REZUTKO,)	
EDWARD WINDBIGLER, STEVEN)	
AMBROSE, and TOM CUTLER, in their)	
individual capacities,)	
)	
Defendants.)	

DEFENDANTS' RULE 12(c)
MOTION FOR JUDGEMENT ON THE PLEADINGS

Defendants, the City of Elkhart, Steve Rezutko, Edward Windbigler, Steven Ambrose and Tom Cutler, by counsel, move for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c) for the following stated reasons:

1. The pleadings are closed and no material facts remain at issue on the Defendants' defenses that the plaintiff's claims under 42 U.S.C. §1983 were not filed within the applicable statute of limitations, are barred by the holding of Heck v. Humphrey, and that it is entitled to immunity against claims based upon the conduct of its officers.
2. The pleadings are closed and no material facts remain at issue on the Defendants' defenses that the plaintiff's claims under state common law were not filed within the applicable statute of limitations, are barred by his failure to file the applicable

notice of tort claim within 180 days after the alleged losses occurred, and that it is entitled to immunity against claims based upon the conduct of its officers.

3. In support of this Motion, the Defendants file an accompanying Memorandum of Law for the Court's consideration.

WHEREFORE, for the reasons stated, the Defendants, the City of Elkhart, Steve Rezutko, Edward Windbigler, Steven Ambrose and Tom Cutler, respectfully request the Court grant the City's motion and enter judgment on the pleadings.

Respectfully Submitted,

NEWBY, LEWIS, KAMINSKI AND JONES, LLP

BY: /s/ Martin W. Kus

Martin W. Kus, # 5377-46
916 Lincolnway-P.O. Box 1816
La Porte, Indiana 46352-1816
Telephone (219) 362-1577
Facsimile (219) 362-2106
Attorney for City of Elkhart

By /s/Andrew S. Williams

Andrew S. Williams, Esq. #23797-02
Michelle K. Floyd, Esq. #29249.02
Hunt Suedhoff Kalamaros, LLP.
803 South Calhoun Street, 9th Floor
Fort Wayne, Indiana 46858-1489
(260) 423-1311
*Attorneys for Defendants Steve Rezutko, Edward
Windbigler, Steven Ambrose and Tom Cutler*

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

KEITH COOPER,)	
)	
Plaintiff,)	
)	Case No. 3:17-CV-00834-PPS-MGG
v.)	
)	
CITY OF ELKHART, STEVE REZUTKO,)	
EDWARD WINDBIGLER, STEVEN)	
AMBROSE, and TOM CUTLER, in their)	
individual capacities,)	
)	
Defendants.)	

PROOF OF SERVICE

I hereby certify that on the 23rd day of August, 2018 I served a complete copy of Defendants' Motion to Dismiss and this Proof of Service with the Clerk of the Court CM/ECF system:

Elliot R. Slosar: elliott@loevy.com;
Jon Loevy: jon@loevy.com;
Gayle Horn: gayle@loevy.com;
Heather Lewis Donnell: heather@loevy.com;
Matthew J. Hagenow: mjhagenow@nlkj.com;
Nicholas T. Otis: ntotis@nlkj.com;
Andrew S. Williams: awilliams@hsk-law.com; and
Michelle Floyd: mfloyd@hsk-law.com
John P. Twohy: jtwohy@eichhorn-law.com

NEWBY, LEWIS, KAMINSKI AND JONES, LLP

By: /s/ Martin W. Kus